



Legislative Fiscal Bureau

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February 7, 2024

TO: Members
Joint Finance Committee

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 658/Senate Bill 616: Modifications to General Fund Taxes and the Wisconsin Lottery

Assembly Bill 658 (AB 658) was introduced on November 9, 2023, and referred to the Assembly Committee on Ways and Means. That Committee held a public hearing on January 4, 2024. On January 11, 2024, that Committee recommended the bill for passage by a vote of 11 to 0.

Senate Bill 616 (SB 616) was introduced on November 7, 2023, and referred to the Senate Committee on Universities and Revenue. That Committee held a public hearing on January 17, 2024. On January 25, 2024, that Committee recommended the bill for passage by a vote of 7 to 1.

AB 658/SB 616 are herein referred to as "the bill".

SUMMARY OF BILL

Provisions of the bill would make the following changes to laws administered by the Department of Revenue (DOR) governing general fund taxes and the Wisconsin Lottery.

Sales and Use Tax Exemption on Road Construction Equipment. Sales of property and items are generally subject to the state sales and use tax unless otherwise exempt. Under current law, the purchase of machinery and equipment may be exempt from the state sales and use tax when used for certain purposes, such as manufacturing, recycling, snowmaking, snow-grooming, fertilizer blending, feed milling, and grain drying. However, the purchase of portable machinery and equipment used in road construction is currently subject to the tax.

The bill would create a sales and use tax exemption for portable machinery and equipment, including accessories, attachments, parts, and supplies for such machinery and equipment, used primarily to crush, mill, produce, or pulverize asphalt, concrete, gravel, rock, or aggregate base for road or commercial surface lot construction or resurfacing. This exemption would take effect on the

first day of the third month beginning after publication. Assuming the bill is published in February and the sales tax exemption takes effect in May, it is estimated that this provision would reduce tax revenues by \$900,000 in 2023-24 and \$5,500,000 in 2024-25.

Allow Lottery to Participate in Additional Games. Current law requires promotional materials for any game in which the prize amount and odds of winning are determined by the number of participants to include all of the following information: (a) an explanation that the prize amount and odds of winning are determined by the number of participants in the game; (b) an explanation of the prize structure; and (c) estimates of the prize amounts and the odds of a particular ticket or share winning each prize. The bill would repeal the final requirement, which prohibits the state from participating in certain "50/50 games," in which a player wins half of the proceeds of ticket sales, because an estimate of the prize amount or odds of winning prior to the sale of the lottery ticket cannot be made. The repeal of this requirement would allow the Wisconsin Lottery to participate in such games. DOR indicates that it would post examples of odds and payments from the previous year for such games on its website.

Under current law, aside from an exception for instant and scratch off games, lottery winners have 180 days from the date of the drawing to claim prizes. The bill would create an additional exemption to this requirement to allow the administrator of the Lottery Division to prescribe a shorter claim period for holders of a winning lottery ticket or lottery share of a secondary or subsequent chance multijurisdictional lottery drawing or game. This shorter claim period would have to be prescribed in the features and procedures for the secondary or subsequent chance drawing or game. This modification would allow the Wisconsin Lottery to participate in such drawings.

To the extent that these provisions would expand the number of games in which the Wisconsin Lottery could participate and increase overall player participation, the provisions could result in an increase in net lottery revenues, which, net of administrative expenses, are used to fund the lottery and gaming tax credit.

Expand Capital Gains Exclusion on Farm Assets. State law provides a 30% exclusion for the net capital gain from assets held more than one year (the deduction is 60% of net long-term capital gain from farm assets held more than one year). Further, state law provides a complete exclusion for net long-term capital gains realized on the sale of business assets and assets used in farming to an eligible family member. The exclusion for sales to family members also applies to shares in certain corporations or trusts that meet the same standards that allow a corporation or trust to carry on farming operations in the state. Eligible corporations or trusts: (a) may not have more than 15 shareholders or beneficiaries (except that one family may count lineal ancestors and descendants, aunts, uncles, and first cousins as one shareholder); (b) may not have more than two classes of shares; (c) and all shareholders or beneficiaries must be natural persons.

For sales occurring on and after January 1, 2024, the bill would extend the capital gains exclusion for the sale of farm assets to eligible family members to ownership interests in farm operations that are organized as a partnership or limited liability company treated as a partnership, if there are 15 or fewer partners (or members) and all partners (or members) are natural persons. It is estimated that this provision would reduce tax revenues by \$200,000 in 2023-24 and \$300,000 in 2024-25.

Increase the Withholding Threshold for Nonresidents. Nonresidents having less than \$2,000 of Wisconsin gross income are not required to file a Wisconsin income tax return. By contrast, an employer is required to withhold tax from Wisconsin wages paid to a nonresident if it appears that the employee will earn more than \$1,500. Thus, many nonresidents having less than \$2,000 of Wisconsin gross income may need to file a tax return in order to receive a refund of their withholding even though they are not required to file a tax return. The bill would increase the threshold for withholding to \$2,000 to match the filing requirement. This provision is estimated to have a minimal effect on revenues and would first apply to taxable years beginning on and after January 1, 2024.

Wisconsin Qualified Opportunity Fund Information Return. Federal law provides for a number of tax benefits for investment into a qualified opportunity fund (QOF). A QOF is an investment vehicle organized as a corporation or a partnership for the purposes of holding at least 90% of its assets in qualified opportunity zone property (certain stock, partnership interest, or business property located within certain designated population census tracts that are low-income communities). State law conforms to federal law, such that a taxpayer's adjusted gross income for state tax purposes will reflect the federal treatment of investments in qualified opportunity funds. In addition, state law also provides for a state subtraction for investments into a Wisconsin QOF

Current law requires a Wisconsin QOF to certify to DOR and investors on or before January 31 that it qualifies as a Wisconsin QOF. However, DOR states that the information needed for completing this form is often not known until the Wisconsin QOF completes its year-end financials and files its income tax return later in the year. The bill would change the due date of the annual certification to be the same as the date the Wisconsin QOF's tax return is due, including extensions for the fund's taxable year. There is no estimated revenue effect for this provision.

FISCAL EFFECT OF BILL

DOR prepared a fiscal estimate of AB 658 on November 15, 2023. Based on information included in that estimate, the bill is estimated to reduce general fund tax collections by \$1,100,000 in 2023-24 and \$5,800,000 in 2024-25. The following table shows the fiscal effects of each of the provisions described above.

	<u>2023-24</u>	<u>2024-25</u>	<u>Fund Source</u>
Sales Tax Exemption for Road Construction Equipment	-\$900,000	-\$5,500,000	GPR-Tax
Allow Lottery to Participate in Additional Games	Unknown	Unknown	SEG
Expand Capital Gains Exclusion on Farm Assets	-200,000	-300,000	GPR-Tax
Increase the Withholding Threshold for Nonresidents	Minimal	Minimal	GPR-Tax
Wisconsin Qualified Opportunity Fund Information Return	<u>N/A</u>	<u>N/A</u>	N/A
Total GPR-Tax:	-\$1,100,000	-\$5,800,000	

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